

## 901:10-1-01 Definitions.

As used in Chapters 901:10-1 to 901:10-6 of the Administrative Code, the definitions contained in Chapter 903. of the Revised Code and the following definitions are applicable:

(A) Act means the Federal Water Pollution Control Act set forth at 33 USC sections 1251 to 1387 .

(B) Administrator means the administrator of the United States environmental protection agency.

(C) Agricultural drainage well means a class five underground injection control well that receives or has the potential to receive drainage from irrigation tail-waters, animal yards, feedlots or dairy runoff and any related agricultural field runoff. An injection well is any bored, drilled, or driven shaft or dug hole whose depth is greater than the largest surface dimension.

(D) Agricultural stormwater discharge means runoff generated by precipitation that drains over terrain used for agriculture as defined in section 1.61 of the Revised Code that conveys manure to waters of the state, provided that the manure has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in manure in compliance with the best management practices set forth in Chapter 901:10-2 of the Administrative Code.

(E) Agronomic rate means a rate of application of nutrients from any source to the land or an amount of nutrients removed by crop based on:

(1) Nutrient content of the manure to be applied;

(2) Nutrient needs of the current or planned crops; and

(3) Nutrient holding capacity of the soil.

(F) Ammonia (as N) means ammonia reported as nitrogen and is listed with approved methods of analysis in table 1B at 40 CFR 136.

(G) Applicant means a person applying for a permit, certificate, or submitting a claim of trade secrecy to the director.

(H) Appropriate design plan means a construction plan for a manure storage or treatment facility that has been accepted by the department as meeting best management practices and recognized industry standards for construction. This includes pre-engineered design plans for the design and construction of manure storage or treatment facilities that have been shown by the engineer, manufacturer, or distributor to conform to the requirements of Chapter 903. of the Revised Code.

(I) Appropriate examination means an examination that has been approved by the department.

(J) Appropriate training program means a training program that has been approved by the department.

(K) Aquifer means an underground consolidated or unconsolidated geologic formation or series of formations that are hydraulically connected and that have the capability to receive, store, and yield usable quantities of water to wells. Aquifer does not include perched groundwater.

(L) Application means the form and supporting documents used by an applicant to apply for an Ohio permit under this chapter.

(M) Average precipitation means the precipitation over the length of a storage period.

(N) Beneficial organisms mean predators, parasites, or pathogens that, during their life cycle, are used to suppress pest organisms or are otherwise beneficial.

(O) Best management practice (BMP) means a practice or combination of practices that is determined to be the most effective and practicable including technological, economic, and institutional controls as a means of complying with the applicable standards of Chapter 903. of the Revised Code. BMPs may include structural and nonstructural practices, conservation practices, prohibition of practices, schedules of activities, operation and maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage, or leaks, sludge or waste disposal or drainage from raw material storage.

(P) Biosecurity refers to the policies and measures taken for protecting food supply and agricultural resources from contamination. Biosecurity also refers to those measures taken to keep disease agents out of populations, herds or groups of animals where they do not already exist. Significant areas on a facility in biosecurity are sanitation, isolation of incoming or returning animals, cleaning and disinfection and traffic control to limit disease spread between all facilities in the production unit.

(Q) BOD5 means five-day biochemical oxygen demand and is listed with approved methods of analysis in table 1B at 40 CFR 136.

(R) Buffer strip means setback of an area of permanent dense vegetation, often planted along the edge or the contour of a land application site or a slope of the field usually for management practices, including practices to slow the flow of water runoff or enhance water filtration, and minimize the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters. Types of buffers include filter strips, field borders, contour grass strips, vegetated cover and riparian buffers. Types of buffers include those described in "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" which includes the following which are available for review at the Ohio department of agriculture website <http://agri.ohio.gov/>:

(1) "Filter Strips/Areas, No. 393," June 2002;

(2) "Riparian Forest Buffer, No. 391," March 1997;

(3) "Field Border, No. 386," June 2002; and

(4) "Contour Buffer Strips, No. 332," June 2002.

(S) Certificate of coverage (COC) means a certificate issued by the director based on receipt of a notice of intent to be covered by rule 901:10-4-03 of the Administrative Code. The certificate of coverage is to be kept in the site office.

(T) Certified livestock manager means a person that has been duly certified by the department and currently holds a valid livestock manager certification.

(U) Cold water habitat means waters designated as coldwater aquatic life habitat by the Ohio environmental protection agency as set forth in Chapter 3745-1 of the Administrative Code.

(V) Construction, for the purposes of stormwater construction permits, means the initial disturbance of soils associated with clearing, grading or excavating activities.

(W) Department means the Ohio department of agriculture, the director, or the director's authorized

representative.

(X) Design capacity means the ability to house or maintain the total number of animals confined or to be confined in open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, medication pens, animal walkways, and stables.

(Y) Dikes mean both dikes and embankments.

(Z) Director means the director of the Ohio department of agriculture or the director's duly authorized representative.

(AA) Discharge means to add any pollutant or combination of pollutants from a point source to waters of the state.

(BB) Distribution and utilization methods means any method of manure management not under the control of the facility and may include, but not be limited to, land application, composting, vermiculture, and alternative fuel source uses.

(CC) Ditch means an excavation, either dug or natural, for the purpose of drainage or irrigation.

(DD) Diversion means a channel constructed across the slope for the purpose of intercepting surface runoff.

(EE) Draft action means a written statement that gives the director's intention with respect to the issuance of any permit, including a NPDES permit or a general permit, concerning which persons authorized by regulation or by section 903.09 of the Revised Code may file comments or request a public meeting, but which will not be the subject of an adjudication hearing before the director.

(FF) Drinking water source protection area for a public water system means:

(1) For a public water system using groundwater, the surface and subsurface area surrounding the well(s) of the public water system that will provide water from an aquifer to the well(s) and that is delineated or endorsed by the Ohio environmental protection agency under Ohio's wellhead protection and source water assessment and protection programs; or

(2) For a public water system using surface water, the drainage area contributing surface water runoff to the water intakes of the public water system that is delineated or endorsed by the Ohio environmental protection agency under Ohio's source water assessment and protection program.

(GG) Effluent limitation means any restriction imposed by the director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the state.

(HH) Fabricated structure means a type of manure storage or treatment facility constructed of engineered, man-made materials such as cast-in-place reinforced concrete, pre-cast concrete, masonry, timber, steel, fiberglass or plastic but does not mean a manure storage pond, a manure treatment lagoon or any of the components of either a manure storage pond or manure treatment lagoon such as described in paragraph (A)(9)(c)(ii) of rule 901:10-2-06 of the Administrative Code. A fabricated structure may contain either solid or liquid manure.

(I) Fact sheet means the statement of facts provided for in paragraph (A) of rule 901:10-6-05 of the Administrative Code relative to issuance of a NPDES permit.

(JJ) Field surface furrow means an area of short-term low-gradient non-erosive concentrated surface

water runoff which occurs during or shortly after precipitation events and is not a river, stream, ditch or grassed waterway. Field surface furrows are areas that are normally planted with crops each year.

(KK) Fecal coliform means fecal coliform bacteria and is listed with approved methods of analysis in table 1 at 40 CFR 136.3 .

(LL) Floodplain means the area designated by the federal emergency management agency adjoining any river, stream, watercourse or lake that has been or may be covered by floodwater.

(MM) Floodway means the channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than the allowable rise as designated by the federal emergency management agency, not exceeding one foot.

(NN) Grassed waterway means a natural or constructed channel that is shaped or graded to required dimensions and established with suitable vegetation to filter and convey runoff from fields, terraces, diversions or other concentrated water runoff without causing erosion or flooding.

(OO) Ground water means any water below the surface of the earth in a zone of saturation, but does not include perched water.

(PP) Injection means the placement of manure beneath the surface of the soil in the crop root zone but not extending beyond the boundary of a land application site and using equipment specifically designed for this purpose.

(QQ) Installation means the permanent fabrication, erection or installation of a manure storage or treatment facility or manure control equipment at the location where the manure storage or treatment facility or manure control equipment is intended to be used. The term does not include the following:

- (1) The dismantling of existing equipment and control devices;
- (2) The ordering of equipment and control devices;
- (3) Off-site fabrication; and
- (4) Site preparation.

(RR) Integrated pest management means a sustainable approach to pest management that combines the use of prevention, avoidance, monitoring and suppression strategies that minimizes and reduces the activity and presence of insects and rodents and keeps such activity and presence below economically damaging levels, minimizing chemical use to reduce pest resistance and the harmful effects of pest control on human health and environmental resources. Integrated pest management includes management, biological controls and the judicious use of chemical controls.

(SS) Karst terrain means an area where karst topography, including the characteristic surface and subterranean features, has developed as the result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features present in karst terrains may include the following:

- (1) Sinkholes;
- (2) Sinking streams;
- (3) Caves.



(TT) Land application areas means land under the control of a concentrated animal feeding operation, whether it is owned, rented, leased or otherwise under the control of the owner or operator, to which manure, or process wastewater from the production area is or may be applied.

U) Liquid manure means manure containing more than or equal to eighty percent liquid.

(VV) Livestock manure broker means a person who is in the business of buying, selling, or land applying manure.

(WW) Livestock manure applicator means a person who is in the business of transporting and land applying manure.

(XX) Manure application means the placement of manure within the boundaries of a land application site by:

(1) Spraying or spreading onto the land surface;

(2) Injection below the land surface in the crop root zone using equipment specifically designed for this purpose; or

(3) Incorporation into the soil by means of the mixing of manure with the surface soil using standard agricultural practices, such as tillage.

(YY) Manure management plan (MMP) means a written plan that adheres to the terms in paragraph (A) (1) of rule 901:10-2-07 of the Administrative Code.

(ZZ) Manure residuals means settled manure solids combined with varying amounts of water and dissolved materials that remain after some form of treatment.

(AAA) Manure spill means any unexpected, unintended, abnormal or unapproved dumping, leakage, drainage, seepage, discharge, release or other loss of manure. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

(BBB) Manure storage area means area of an animal feeding facility used by the owner or operator for the storage of manure produced by the facility. Manure storage areas include, but are not limited to, manure storage or treatment facilities, lagoons, runoff ponds, storage sheds, stockpiles, stacking areas, under house or pit storages, liquid impoundments, and composting piles.

(CCC) Manure storage or treatment facility means any excavated, diked or walled structure or combination of structures designed for the biological stabilization, holding or storage of manure. These facilities include manure storage ponds, manure treatment lagoons, fabricated structures, lagoons, manure storage sheds, under house or pit storages, and composting areas.

(DDD) Manure storage pond means a type of manure storage or treatment facility consisting of an earthen impoundment made by constructing an embankment and/or excavating a pit, the purpose of which is to store or settle manure. A manure storage pond contains liquid manure.

(EEE) Manure treatment lagoon means a type of manure storage or treatment facility consisting of an earthen impoundment made by constructing an embankment and/or excavating a pit, the purpose of which is to biologically treat manure. A manure treatment lagoon contains liquid manure.

(FFF) Modification means one or more of the following:

(1) For NPDES permits, permits to install, and permits to operate: A material and substantial alteration of the facility including an increase of the number of animals that exceed the design capacity of an existing facility by ten per cent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or facility's capacity be modified to increase by more than ten per cent in the aggregate.

(2) For permits to install and permits to operate: Any structural change to the facility that will alter compliance with siting criteria as set forth in rule 901:10-2-02 of the Administrative Code;

(3) For permits to operate: Any changes to the insect and rodent control plan approved by the director except as set forth in paragraphs (E) and (F) in rule 901:10-2-19 of the Administrative Code;

(4) For NPDES permits, permits to install, and permits to operate: Changes described in rule 901:10-1-09 of the Administrative Code as being grounds for modification of the permit type; or

(5) For NPDES permits, permits to install, and permits to operate: Changes to the manure storage or treatment facility that result from an expansion of the existing facility by ten per cent or more in excess of treatment or storage capacity.

(GGG) Multi-year phosphorus application means phosphorus applied to a field in excess of the crop needs for that year in accordance with appendix e of rule 901:10-2-14 of the Administrative Code.

(HHH) Neighboring residence means any occupied permanent dwelling acquired by its current owner prior to the application for a permit to install a new animal feeding operation or prior to the initial construction of an animal feeding operation for which an application for a permit to install expansion or modification has been submitted. A neighboring residence does not include any dwelling owned by the owner or operator of a production area of the facility at the time the permit to install application is submitted.

(III) New discharger means any building, structure, facility, or installation:

(1) From which there is or may be a discharge of pollutants;

(2) That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(3) Which is not a new source; and

(4) Which has never received a final effective NPDES permit for discharges at that site.

(JJJ) New source is defined at 40 CFR 122.2 and new source criteria are as defined at 40 CFR 122.29(b) .

(KKK) Nitrate (as N) means nitrate reported as nitrogen and is listed with approved methods of analysis in table 1B at 40 CFR 136.

(LLL) Nutrient means, for purposes of Chapter 903. of the Revised Code, nitrogen or phosphorus.

(MMM) Operating record means the written record of a facility and other activities conducted under a permit to operate maintained by the owner or operator as found in rule 901:10-2-16 of the Administrative Code.

NN) Owner or operator, for the purposes of sections 903.02 , 903.03 , 903.04 and 903.05 of the Revised Code, means the person that owns or operates the manure storage or treatment facility or the concentrated animal feeding facility or concentrated animal feeding operation or major concentrated animal feeding facility as found in divisions (M), (N), (O), and (EE) of section 903.01 of the Revised Code.

(1) Owner means the person who has the right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility or holds or is able to control, either directly or through a holding company or subsidiary, by means of any of the following:

) The person holds at least twenty-five per cent of the equity of the facility which is a business concern that is a publicly traded corporation; or

(b) The person is any other business concern not covered in paragraph (NNN)(1)(a) of this rule and holds at least fifty per cent of the equity of the facility; or

(c) The person has provided a loan to the facility with provisions for the right to control management of the facility or actual control of the facility or the selection of officers, directors, or managers of the facility.

(2) Types of ownership may include the any of the following:

(a) "Business concern" means any corporation, association, firm, partnership, trust, or other form of commercial organization.

(i) "Sole proprietorship" means a form of business concern, other than a partnership or corporation, in which one person owns all the assets and is solely liable for all the debts of the business. Sole proprietor includes any individual or entity in which an individual is an applicant or permittee or prospective owner.

(ii) "Partner" means a business concern where any person holding a position as, or similar to, a general partner, as defined in division (E) of section 1782.01 of the Revised Code, or a limited partner, as defined in division (F) of section 1782.01 of the Revised Code, or persons who share profits and liability and have management powers of a partnership, as partnership is defined in section 1775.05 of the Revised Code.

(iii) "Publicly traded corporation" means a business concern that is a corporation:

(a) Whose shares are listed on a national securities exchange; or

(b) Whose shares are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association; or

(c) With fifty or more shareholders.

(b) "Equity" means any ownership interest in a business concern, including sole proprietorship, the shares of a partner, and stock in a corporation.

(c) "Loans" means notes, mortgages, or financial loans of any kind, secured or unsecured, unless held by a chartered lending institution.

(3) "Operator" means the person responsible for the direct control or overall operations of a facility, and whose duties or responsibilities involve, in whole or part, the management of the facility and the exercise of independent or discretionary judgment. An operator may include the person who has the right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility.

(OOO) Overflow means the discharge of manure resulting from the filling of manure storage or treatment facilities beyond the point at which no more manure or stormwater can be contained by the facilities.

(PPP) Past violations for purposes of rule 901:10-5-04 of the Administrative Code means violations of Chapter 903. of the Revised Code and rules promulgated thereunder that have occurred on more than one

occasion in the past five years.

(QQQ) Pests means detrimental insects and rodents.

RR) Phosphorus (as P) means the same as phosphate in this chapter.

(SSS) Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, large concentrated animal feeding operation, medium concentrated animal feeding operation, small concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

(TTT) Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended ( 42 U.S.C. 2011 et. seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels; or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(UUU) Professional engineer means a person qualified to practice engineering according to the provisions of Chapter 4733. of the Revised Code and is presently registered by Ohio's board of registration for professional engineers and land surveyors.

(VVV) Precipitation event means:

(1) A ten year, twenty-four hour rainfall event with a probable recurrence interval of once in ten years, or

(2) A twenty-five year, twenty-four hour rainfall event with a probable recurrence interval of once in twenty-five years; or

(3) A one-hundred year, twenty-four hour rainfall event.

(4) The terms ten year, twenty-four hour precipitation event, twenty-five year, twenty-four hour precipitation event, and one-hundred year, twenty-four hour precipitation event shall mean a precipitation event with a probable recurrence interval of once in ten years or twenty-five years or one hundred years, respectively, as defined by the national weather service in technical paper number forty, rainfall frequency atlas of the United States, May 1961, and subsequent amendments or equivalent regional or state precipitation probability information.

(WWW) Public water system, or PWS, means a system which provides water for human consumption through pipes or other constructed conveyances for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such term includes any collection, treatment, storage and distribution facilities under the control of the operator of such system and used

primarily in connection with such system, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system and any water supply system serving an agriculture labor camp, as defined in section 3733.41 of the Revised Code. A public water system is either a "community water system" or a "non-community water system".

(1) Community water system or CWS means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

(2) Non-community water system or NCWS means a public water system that is not a community water system.

(a) Non-transient non-community water system or NTNCWS means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year.

(b) Transient non-community water system or TNCWS means a non-community public water system that does not regularly serve at least twenty-five of the same persons over six months of the year.

(XXX) Reasonably available means a person that is within a two hour drive of the facility and is available by telephone or by electronic communication.

(YYY) Seasonal salmonid habitat means rivers, streams and embayments designated a seasonal salmonid aquatic life habitat by the Ohio environmental protection agency as set forth in Chapter 3745-1 of the Administrative Code.

(ZZZ) Setback means a specified distance from surface waters, wells, neighboring residences, or potential conduits to surface waters where manure, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

(AAAA) Solid manure means manure containing greater than twenty per cent total solids.

(BBBB) Sole source aquifer means an aquifer designated by the United States environmental protection agency as the sole or principal source of drinking water for a given aquifer service area.

(CCCC) Soil means unconsolidated, erodible earth material consisting of minerals or organics.

(DDDD) Soil horizon means a layer of soil, approximately parallel to the soil surface, with characteristics produced by soil-forming processes.

(EEEE) Staging or staging area means the land application area used for placement of manure at the time of delivery in such a manner as to facilitate land application within fifteen days at that site. Staging includes the transfer of liquid manure from transport vehicles to land application equipment.

(FFFF) Stockpile or stockpile area means field placement of the amount of manure to be used at a land application area.

(GGGG) Storage or storage period means the length of time anticipated between manure clean-out events provided that manure storage does not mean any form of manure containment for a period of fourteen days or less.

(HHHH) Substantial compliance when referring to compliance with the provisions of a permit, means following the effluent limitations and best management practices set forth in the permit.



(IIII) Surface waters of the state means all streams, lakes, ponds, marshes, watercourses, wetlands, springs, drainage systems, and other bodies or accumulations of surface water, natural or artificial, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(JJJJ) Total coliform means all coliform bacteria and is listed with approved methods of analysis in table 1A at 40 CFR 136.3 .

(KKKK) Total dissolved solids means nonfilterable residue and is listed with approved methods of analysis in table 1B at 40 CFR 136.

(LLLL) Trade secrets means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, improvement, business information or plans, financial information, listing of names, addresses, or telephone numbers that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means by other persons who can obtain economic value from its disclosure or use.

(2) The person claiming the secrets has taken reasonable efforts under the circumstances to maintain secrecy.

(MMMM) Uncovered means any manure storage or treatment facility that allows exposure of manure to precipitation events or to the run-on or run-off from precipitation events.

NNN) Variance means a type of permit modification that applies to NPDES permits.

(OOOO) Zoonotic diseases means illnesses that can be transmitted between humans and animals.

(PPPP) "40 C.F.R." means Title 40 of the Code of Federal Regulations effective July 1, 2010.

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## **901:10-1-02 General administrative requirements for permits.**

(A) Requirements for an individual permit to install, an individual permit to operate, or an individual NPDES permit:

(1) A person who is required to obtain both a permit to install pursuant to section 903.02 of the Revised Code and a permit to operate pursuant to section 903.03 of the Revised Code shall submit both applications for these permits simultaneously.

(2) A facility that is required to obtain both an NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES permit as federally enforceable. For purposes of Chapters 901:10-1 to 901:10-6 of the Administrative Code, the term NPDES permit, NPDES operation, and concentrated animal feeding operation is an animal feeding facility that is subject to the NPDES permit as established in section 402 of the act and includes the renewal of such a permit. NPDES permit includes the federally enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated.

A person who seeks coverage by a general permit must refer to rules 901:10-3-11 , and 901:10-4-01 to 901:10-4-05 of the Administrative Code for a general permit to operate, general NPDES permit or general NPDES stormwater permit.

(3) An application for a permit to install, a permit to operate, or a NPDES permit to be deemed complete, must include:

(a) All required information as set forth in Chapter 901:10-2 and, if applicable, Chapter 901:10-3 of the Administrative Code, and shall accompany the application; and

(b) An appropriate fee as stated in rule 901:10-1-04 of the Administrative Code.

(c) Any supplemental information which is completed to the satisfaction of the director.

(d) If the application and accompanying materials submitted to the department is deemed to be incomplete, the department will notify the owner or operator with instructions as to what is missing or what needs to be completed.

(4) An application for a permit to install, permit to operate or NPDES permit shall include information on ownership and background, including but not limited to, the following information:

(a) The name and address of the applicant, of all partners if the applicant is a partnership or all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors or managers of the applicant;

(b) When required by section 903.05 of the Revised Code, each application for a permit to install or permit to operate must contain information on a record of past compliance if the applicant has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application. If the permit to install and the permit to operate are submitted simultaneously as provided in division (A)(9) of section 903.10 of the Revised Code, then the following information is sufficient to satisfy the requirements of the permits:

(i) A listing of all concentrated animal feeding facilities that the owner or operator of the proposed new or

modified concentrated animal feeding facility has operated or is operating in Ohio;

(ii) A listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating outside the United States;

(iii) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted during the five years immediately preceding the submission of the application in connection with any violation of the federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator 901:10-1-02 3 has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating outside of the United States. The lists of concentrated animal feeding facilities operated by the owner or operator within or outside this state or outside the United States shall include, respectively, all such facilities operated by the owner or operator during the five year period immediately preceding the submission of the application.

(5) In the case of an application for a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(6) In the case of an application that meets the criteria established in sections 307.204 and 505.266 of the Revised Code, written statements from the board of county commissioners of the county and the board of township trustees of the township in which the facility will be located, certifying that, in accordance with those sections, the applicant has provided the boards with the required written notification and that final recommendations, if any, regarding improvements and costs of improvements have been made by the boards.

(7) An application for a permit to install a concentrated animal feeding facility shall contain documentation or correspondence that verifies that the owner or operator has notified local officials, including boards of county commissioners, county engineer, and boards of township trustees to address infrastructure needs and financing of that infrastructure which includes but is not limited to:

(a) The anticipated travel routes of motor vehicles to and from the facility;

(b) Notwithstanding any exemptions that may be applicable under section 5577.042 of the Revised Code, the owner or operator shall provide the anticipated number and weights of motor vehicles traveling to and from the facility with an estimated maximum overall gross weight of vehicles upon the road surface;

(c) Operational needs of the proposed facility for access to roads and location of such access; and

(d) Operational needs of the proposed facility for access to ditches, culverts, off-site drainage, rights-of-way for manure transport.

(8) A certification statement as follows: "I certify under penalty of law that this document and all

attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. "Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information the information is, to the best of my knowledge and belief, true and accurate and complete. I am aware there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

(9) A complete application is required.

(a) Any person who requires a permit shall complete, sign, and submit to the director an application for each permit required and a copy of that application for each permit required.

(b) The director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit.

(c) Permit applications must comply with the signature and certification requirements of this rule.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied in accordance with division (F) of section 903.09 of the Revised Code and appropriate enforcement actions may be taken under applicable provisions of the Chapter 903. of the Revised Code and rules promulgated there under.

(B) The owner or operator shall maintain a copy of the current permit to install, permit to operate or NPDES permit issued by the department at the facility site office.

(C) Duration and renewal.

(1) Permit to install.

(a) A permit to install shall expire after twenty-four months unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time.

(b) The director may extend the expiration of a permit to install upon request of the applicant. An extension, if approved, will be valid for twelve months from the previous expiration date of the permit to install.

(c) Any further extensions are at the discretion of the director.

(2) Permit to operate.

(a) A permit to operate shall be valid for a period of five years.

(b) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing application for permits to operate that are established by rules, including rules 901:10-2-07 to 901:10-2-20 of the Administrative Code.

(D) NPDES permit.

(1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by a general permit under Chapter 901:10-4 of the Administrative Code, must submit a complete application to the director in accordance with this rule and Chapter 901:10-2 of

the Administrative Code.

(2) Any person proposing a new discharge shall submit an application at least one hundred and eighty days before the date on which the discharge is to commence unless permission for a later date has been granted by the director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application one hundred and eighty days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity.

(3) When a concentrated animal feeding operation is owned by one person but is operated by another person, the operator may obtain a permit.

(4) Facilities undergoing construction activities that include clearing, grading, excavating, grubbing and/or filling activities that result in the disturbance of one or more acres shall submit applications at least ninety days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits.

(5) Applicants for concentrated animal feeding operations must submit form 2B.

(6) A NPDES permit shall be valid for a period not to exceed five years.

(7) A NPDES permit may be renewed. An application for renewal of a NPDES permit shall be submitted to the director at least one hundred eighty days prior to the expiration date of the NPDES permit and shall comply with the requirements governing applications for permit to operate and NPDES permit applications that are established in Chapters 901:10-2 and 901:10-3 of the Administrative Code.

(E) A permit to operate application that is not connected with an application for a NPDES permit or a permit to install shall be acted upon not later than ninety days after receipt of a complete application as provided by paragraph (A)(9) of this rule. The director or the director's authorized representative may provide guidance and technical assistance to the applicant, provided that the owner or operator is responsible for compliance with the permit and the director shall not be estopped from enforcement.

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Prior Effective Dates: 7/2/2002, 9/15/2005, 1/23/2009, 9/1/2011



## **901:10-1-03 Criteria for decision-making.**

(A) Criteria for decision making by the director. The director shall deny, modify, suspend or revoke a permit to install or permit to operate if:

- (1) The permit application contains misleading or false information; or
- (2) The designs and plans fail to conform to best management practices and to the rules in this chapter or if the owner or operator fails to build the facility in accordance with design plans as approved in the permit to install or in accordance with amended and approved design plans; or
- (3) The plans for the manure management plan, the insect and rodent control plan and any other plans governing the operation fail to conform to best management practices and to rules of this chapter; or
- (4) The director determines that the designs and plans describe a proposed discharge or source for which a NPDES permit is required under this chapter and that will conflict with an areawide waste treatment plan adopted in accordance with section 208 of the act; or
- (5) The facility is not designed or constructed as a non-discharge system or operated to prevent the discharge of pollutants to waters of the state or to otherwise protect water quality; or
- (6) The director determines that the applicant or owner or operator has not complied with rule 901:10-1-10 of the Administrative Code.

(B) The director may deny, modify, suspend or revoke a permit to install or permit to operate if the applicant, owner, operator or persons associated in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or environmental laws of another country that indicates that the applicant or owner or operator lacks sufficient reliability, expertise and competence to operate the facility in substantial compliance with Chapter 903. of the Revised Code and this chapter.

In evaluating a history of substantial noncompliance as required, the director may consider all of the following for a period of five years preceding the date of the application:

- (1) Any information submitted on ownership and background pursuant to rule 901:10-1-02 of the Administrative Code, including the following:
  - (a) If the applicant or permittee is a publicly traded corporation, provide the full name, date of birth, and business address of each individual or business concern holding more than twenty-five per cent of the equity in the applicant or permittee; or
  - (b) If the applicant or permittee is a sole proprietor or any other business concern, provide the full name, date of birth, and business address of each individual or business concern holding more than fifty per cent of the equity in the applicant or permittee;
  - (c) If the applicant or permittee is a partnership, as partnership is defined in section 1775.05 of the Revised Code, provide the full name, date of birth, and business address of each individual or business concern holding more than fifty per cent of the equity in the applicant or permittee; and
  - (d) If the applicant or permittee is the recipient of a financial loan to the facility with provisions for the right to control management of the facility or actual control of the facility or the selection of officers, directors,

or managers of the facility, identify the full name, date of birth, and business address of each individual or business concern providing the loan.

(2) Any administrative enforcement action (including an administrative order or notice of violation), civil suit, or criminal proceeding that is:

(a) Pending against the applicant or a business concern owned or controlled by the applicant;

(b) Resolved or dismissed in a settlement agreement, in a consent order or decrees, is adjudicated or otherwise dismissed and that may or may not have resulted in the imposition of:

(i) A sanction such as a fine, penalty, payment or work or service performed in lieu of a fine or penalty; or

(ii) Cessation or suspension of operations.

(c) Any revocation, suspension, or denial of a license or permit or equivalent authorization; or

(d) With respect to paragraph (B)(1)(a) of this rule, any explanation that the applicant or owner or operator may choose to submit.

(C) In addition to the criteria set forth in paragraphs (A) and (B) of this rule, the director shall deny, modify, suspend, or revoke an NPDES permit if the director determines::

(1) Discharge from the facility will prevent or interfere with attainment or maintenance of applicable water quality standards adopted under section 6111.041 of the Revised Code and the most current antidegradation policy adopted under section 6111.12 of the Revised Code; or

) Discharge from the facility will not achieve compliance with national effluent standards; or

(3) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Act; or

(4) The proposed discharge or source will conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Act; or

(5) Forms, notices, or reports required pursuant to the terms and conditions of the NPDES permit are false or inaccurate;

(6) The discharge is of any radiological, chemical, or biological warfare agent or high-level radioactive waste or medical waste; or

(7) The United States army corps of engineers for the district in which the discharge is located objects in writing to the issuance of the NPDES permit as substantially impairing navigation or anchorage; or

(8) Discharge from the facility will not achieve national standards of performance for new sources; or

(9) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or

(10) The permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(11) The applicant or owner or operator is required to obtain a state or other appropriate certification under section 401 of the act and 40 CFR section 124.53 and that certification has not been obtained or

waived;

(12) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

(13) Discharge from the facility will not achieve and maintain compliance with other requirements of the act and the regulations promulgated thereunder.

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## 901:10-1-04 Fees.

(A) Applicants for permits and certifications shall pay non-refundable fees to the department of agriculture for each such issuance as provided by this rule and rule 901:10-1-02 of the Administrative Code.



(B) As required in rule 901:10-1-06 of the Administrative Code, the livestock manager certificate will be assessed a fee of fifty dollars. Fees are assessed upon application for a certificate or renewal of certificate. A late charge of thirty dollars shall be assessed for a certificate expired more than ten days.

(C) The permit to install shall be submitted simultaneously with the permit to operate with applicable fees for each permit.

(D) An application for the permit to install will be assessed a fee of two thousand two hundred fifty dollars.

(E) A stormwater construction permit application will be assessed a fee of five hundred dollars.

(F) An application for the permit to operate, filed independently or with a permit to install, will be assessed a fee of one thousand dollars. The renewal fee for the permit to operate will be one thousand dollars.

(G) An application for the permit to operate, filed with an application for a NPDES permit, will be assessed an additional fee of two hundred fifty dollars. The total amount will be one thousand two hundred fifty dollars for this combined permit.

(H) An application for a general permit to operate will be assessed a fee of one thousand dollars. The renewal fee for the general permit to operate is one thousand dollars.

(I) An application for a general permit to operate, filed with an application for a NPDES permit, will be assessed an additional fee of two hundred fifty dollars. The total amount will be one thousand two hundred fifty dollars for this combined permit.

(J) An application for an individual or general NPDES permit will be assessed a fee of two hundred fifty dollars.

(K) A request for a major operational change shall be assessed a fee of five hundred dollars.

(L) Permit transfers are subject to a fee of five hundred dollars.

(M) Modifications to permits are subject to a fee of one thousand dollars.

(N) The fees assessed under this rule shall be collected upon submission of the application for permit as required by rule 901:10-1-02 of the Administrative Code or certificates or renewals or upon application for permit transfer or permit modification.

(O) The director shall review the fees prescribed in paragraphs (B) to (N) of this rule biennially. If necessary to revise fees, the director shall compile revised fee schedules and shall make the revised schedules available to persons required to pay the fees and to the public.

(P) If fees do not accompany the application as set forth in paragraphs (B) to (N) of this rule, the application will be deemed incomplete. The applicant will be contacted with notice as to what fees are

applicable and the application will not be processed until the fees are paid.

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Prior Effective Dates: 7/2/2002, 9/15/2005



## **901:10-1-05 Trade secrets requests for confidentiality.**

(A) Applicant means a person submitting a claim of trade secrecy to the director or to the director's authorized representative.

(B) Records, reports or other information obtained under Chapter 903. of the Revised Code or rules thereunder may be entitled to protection as trade secrets. In order to be protected, the applicant shall demonstrate to the director's satisfaction that all or part of such records, reports or other information, (including attachments that are required to be submitted), or other part thereof (other than effluent data) to which the director has access under this rule, if made public would divulge methods or processes or other information entitled to protection as trade secrets. If the director determines that the claim for trade secret is satisfied, the director shall consider such records, reports, or other information or part thereof confidential and manage the records, reports or other information pursuant to this rule.

(C) The following information is considered a public record for which claims of trade secrecy will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit forms, permit applications, permits and sampling and effluent data;

(3) Information required by NPDES application forms provided by the department including information submitted on the forms themselves and any attachments used to supply information required by the forms; and

(4) Any public comments, testimony or other documentation from the public concerning a permit application.

(D) A request for confidentiality shall be submitted to the director simultaneously with submission of the specific record, report or other information. The applicant shall clearly indicate the record, report or information as trade secret and shall label it "trade secret". Failure to make such request simultaneously shall constitute a waiver of the right to prevent public disclosure. A request for confidentiality shall be accompanied by documents that support the request which include:

(1) Describe the measures the applicant has taken to safeguard the confidentiality of the information.

(2) Indicate whether or not others are bound by a confidentiality agreement.

(E) A decision as to the confidentiality request shall be made by the director within forty-five days of receipt of a request filed in accordance with this rule. Until such decision is made, the record, report or other information or part thereof, shall be confidential and maintained by the director in a separate file labeled "confidential". The applicant shall be notified by mail of the decision.

(F) Any record, report or other information determined to be confidential may be disclosed without the applicant's consent to officers, employees or authorized representatives of the state, another state or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act.

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## **901:10-1-06 Certified livestock manager.**

### **(A) Purpose and applicability.**

(1) The management and handling of manure at a major concentrated animal feeding facility, shall be conducted by or under the supervision of a person that has a current livestock manager certification and that is reasonably available to the facility.

(2) No person who is a livestock manure broker shall buy, sell, or land apply annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.

(3) No person who is a livestock manure applicator shall land apply and transport annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.

(4) Any person subject to this rule who is either a livestock manure broker or a livestock manure applicator shall maintain an operating record on forms provided by the department and other forms selected by the livestock manure broker or livestock manure applicator and approved by the director. The operating record shall be retained for a minimum period of five years, shall be made available to the director upon request, and shall record and document in accordance with paragraph (B) of rule 901:10-2-16 of the Administrative Code.

(5) In order for a person to manage or handle manure at a major concentrated animal feeding facility or for a person to either transport and land apply manure or to, buy, sell or land apply annually more than four thousand five hundred dry tons of solid manure or more than twenty-five million gallons of liquid manure in this state, they shall obtain a livestock manager certification from the department. In the alternative, the person may present a certified copy of an equivalent and valid manure manager certification from another state, which has been verified by the director or his designated representative, together with the appropriate fee as listed in the fee rule.

(6) This rule does not apply to a person who is an owner or operator of a concentrated animal feeding facility permitted by the director in accordance with section 903.02 of the Revised Code or section 903.03 of the Revised Code, unless that person applies other manure from another animal feeding facility, concentrated animal feeding facility, or major concentrated animal feeding facility in excess of four thousand five hundred tons per year of solid manure or more than twenty-five million gallons of liquid manure per year.

(7) A person is considered to be under supervision of a certified livestock manager if the holder of the certification is reasonably available, but not necessarily physically present, during the management and handling of manure. The certified livestock manager cannot claim the lack of presence as a defense under Chapter 903. of the Revised Code.

### **(B) Application and certification procedures.**

(1) In order to be a certified livestock manager, the applicant must meet the requirements in paragraphs (1) to (D)(5) of this rule.

(2) The applicant for a livestock manager certification shall file an application on a form provided by the director. The application shall include but not be limited to: address and telephone number of the applicant; the results of the applicant's test results for any examination completed by the applicant as

described in paragraphs (D)(1) to (D)(5) of this rule; and if applicable, the quantity of manure managed or handled by the applicant.

(3) All certifications issued shall expire on December thirty-first of the third year after the year in which the certificate was issued and each December thirty-first triennially thereafter, unless renewed in accordance with this rule. Any certification issued shall be valid for three years and thereafter be subject to renewal. A renewal shall be valid for three years.

(4) The department shall charge an appropriate fee as listed in the fee rule 901:10-1-04 of the Administrative Code for the issuance and renewal of a livestock manager certification.

(5) In order for a certification to be renewed, the holder must accumulate ten hours of continuing education credit over a three year period immediately preceding the date of application.

(C) Enforcement.

(1) The director may suspend, revoke or deny a livestock manager certification if the certified livestock manager:

(a) Engages in fraud or deceit in obtaining a certification; or

(b) Fails to exercise reasonable care, judgment or use of the manager's knowledge and ability in the performance of the duties of a certified livestock manager; or

(c) Is incompetent or otherwise unable to properly perform the duties of a certified livestock manager; or

(d) Has violated or caused to be violated any provision of rules of Chapter 903. of the Revised Code.

(2) If a livestock manager certification is suspended, the suspension shall be in effect for a period of not less than two hundred seventy days. After the required two hundred seventy days has passed and if there is substantial evidence that the conditions leading to the suspension have been corrected, the director may issue a certificate to reinstate the suspended livestock manager certification. A person may apply in writing for reinstatement. The petition must include any relevant facts concerning changes to conditions under which suspension or revocation occurred.

(3) If a livestock manager certification is revoked, the livestock manager has a right to a hearing in accordance with Chapter 119. of the Revised Code.

(4) If a livestock manager certificate is denied, the livestock manager is entitled to a hearing in accordance with Chapter 119. of the Revised Code.

(5) If a certified livestock manager fails to renew his certification within thirty days of its expiration, he or she must make application for certification and meet the requirements of paragraph (B) of this rule.

(6) Violations of section 903.07 of the Revised Code and division (E) of section 903.10 of the Revised Code and this rule will be considered to be category II and low gravity as set forth in rule 901:10-5-04 of the Administrative Code.

(D) Training and examination procedures.

(1) The department may offer a training program and an examination for a livestock manager certification. The applicant shall have knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a

manure storage or treatment facility and following best management practices for disposal of dead animals and manure management, including practices that control odor and protect the environment. The applicant shall be expected to have knowledge of how to devise and implement a manure management plan and an insect and rodent control plan. In addition, the applicant shall understand the laws and rules related to animal feeding facilities.

(2) An applicant for a livestock manager certification shall pay a fee as required by rule 901:10-1-04 of the Administrative Code.

(3) The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(4) The director has determined that the following training and certification programs satisfy this rule:

(a) If an applicant for a livestock manager certification demonstrates that he or she has the knowledge of information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training provided in accordance with the "certified crop advisor" program conducted by the "American Society of Agronomy" and demonstrates that he or she has successfully passed the examination, then the applicant will be eligible for a certificate issued in accordance with this rule; or

(b) If the applicant for a livestock manager certificate demonstrates that he or she has the knowledge of the information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training and certification of the United States department of agriculture natural resource conservation service relating to being a certified planner to prepare comprehensive nutrient management plans, then the applicant will be eligible for a certificate issued in accordance with this rule.

) The department may cooperate with or enter into cooperative agreements with any official agency of the federal government, of this state or its subdivisions, or other academic or private institutions for the purpose of administration of the training and examination portions of Chapter 903. of the Revised Code.

(6) In accordance with section 903.20 of the Revised Code, the director may call upon the concentrated animal feeding facility advisory committee to assist in establishing the standards of training and examination.

(7) Training and examination opportunities will be provided at such times and places as determined by the department in consideration of the number and location of requests.

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## **901:10-1-07 [*Rescinded*] Review compliance certification applications.**

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Prior Effective Dates: 7/2/2002, 9/15/2005

## **901:10-1-08 Permit transfer.**

(A) Transfers of permits for concentrated animal feeding facilities and concentrated animal feeding operations are permissible.

(B) In this rule, transferor means the current holder of a permit to install and/or permit to operate and/or NPDES permit. Transferee means the person making application to acquire the existing permit.

(1) The director shall be notified in writing by the transferor at least thirty days prior to any proposed transfer of a permit. The transferee shall inform the director that it will assume the responsibilities of the transferor.

(2) The notice shall include a written agreement between the transferor and transferee containing a specific date for transfer of permit responsibility, coverage and liability between the parties..

(C) In order to satisfy the requirements of paragraph (B) of this rule, the following information shall be submitted by the transferee:

(1) The name and address of the transferor and the transferee. The transferee shall identify all partners if the transferee is a partnership or all officers and directors if the transferee is a corporation, and of any other person who has a right to control or in fact controls management of the transferee or the selection of officers, directors, or managers of the transferee. If the transferee is an owner or operator, the transferee must satisfy the requirements of this rule.

(2) In the case of an application for a transfer of a permit for a major concentrated animal feeding facility, written proof that includes copies of certificates or authenticating documentation that they will employ a certified livestock manager.

(D) Each application to transfer a permit that is submitted by a new owner or operator who has not operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application for transfer shall be accompanied by all of the following:

(1) A listing of all animal feeding facilities that the transferee has operated or is operating in this state;

(2) A listing of the animal feeding facilities that the transferee has operated or is operating elsewhere in the United States and that are regulated under the Act together with a listing of the concentrated animal feeding facilities that the transferee has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued in connection with the transferee; all civil actions in which the transferee was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief; all criminal actions in which the transferee pleaded guilty or was convicted during the five years immediately preceding the submission of the application for transfer in connection with any violation of the "Federal Water Pollution Control Act," the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any animal feeding facility that the transferee has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the transferee has operated or is operating outside the United States. The lists of concentrated animal feeding facilities operated by the transferee within or outside this state or outside the United States shall include, respectively, all such facilities operated by the transferee during the five-year period immediately preceding the submission of the application.

(E) Denial of transfer of permits to install, permits to operate, or NPDES permits. The director may deny the application for transfer if the director finds from the application, the information submitted and pertinent information obtained by the director at the director's discretion that the transferee and persons associated with the transferee in the operation of animal feeding facilities have a history of substantial noncompliance with the "Federal Water Pollution Control Act," the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or the environmental laws of another country that indicates that the transferee lacks sufficient reliability, expertise and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it. In evaluating a history of substantial noncompliance the director shall consider the information required to be submitted pursuant to rule 901:10-1-03 of the Administrative Code. A denial by the director may be appealed by the owner or operator in accordance with Chapter 119. of the Revised Code.

(F) If the director does not notify the transferor or the transferee of an intention to object to the transfer, then the permit will be transferred. The director may also notify both the transferor and the transferee of the director's decision.

(G) The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the act.

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for Effective Dates: 1/23/2009, 9/15/2005, 7/2/2002

## **901:10-1-09 Permit modifications.**

(A) No permit to install, permit to operate or NPDES permit shall be modified unless the modification is in compliance with this rule. When a permit is modified, only the conditions subject to modification are reopened. A draft permit incorporating the proposed changes must be prepared and is subject to public notice and public participation procedures as set forth in rules 901:10-6-01 to 901:10-6-06 of the Administrative Code.

(B) The director may propose to modify a permit and may seek the consent of the owner or operator modifying the permit. The director may modify a permit for the following reasons which include, but are not limited to:

- (1) Information submitted by the owner or operator requesting to modify the permit;
- (2) Information obtained through inspections;
- (3) A permit is reviewed by the director, or
- (4) Other causes as provided in 40 CFR section 122.62(a) .

(C) If the director seeks to modify the permit with the consent of the owner or operator and the owner or operator does not consent to the director's modification, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(D) If the director seeks to modify the permit without seeking the consent of the owner or operator, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(E) Either the director or any interested person including the permittee may request to modify a NPDES permit or revoke and reissue a NPDES permit or both for the following reasons:

(1) Alterations. There are material and substantial alterations, additions or expansions to the operation which occurred after a permit was issued which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The director has received new information. NPDES permits may be modified during their term for this cause only if the information was not available at the time of permit issuance (other than revised rules or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For a new source of an NPDES discharge this cause shall include any significant information derived from effluent testing required after issuance of the permit.

(3) New regulations. The standards or rules on which the NPDES permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued. NPDES permits may be modified during their terms for this cause only as follows:

(~) For promulgation of amended standards or rules, when:

(i) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or on promulgated water quality standards or water quality standards approved by the United States environmental protection agency; and

(ii) The United States environmental protection agency has revised, withdrawn or modified that portion of the rule or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

ii) An owner or operator requests modification within ninety days after Federal Register notice of the action on which the request is based.

(b) For judicial decisions, when: a court of competent jurisdiction has remanded and stayed rules; if the remand and stay concern that portion of the rules or guidelines on which the permit condition was based; and a request for a permit modification is filed by the owner or operator within ninety days of judicial remand.

(4) Compliance schedules. The director determines good cause exists for modification of a compliance schedule of a NPDES permit, such as acts of nature or acts of third parties, strike, flood, materials shortage or other events over which the owner or operator has little or no control and for which there is no reasonably available remedy. However, in no case may a NPDES permit compliance schedule be modified to extend beyond any applicable statutory deadline in the act.

(5) When the owner or operator has filed a request for a variance under rule 901:10-3-08 of the Administrative Code or for a "fundamentally different factors" variance within the time specified in 40 CFR section 122.21 or 40 CFR section 125 for an NPDES permit.

(6) To correct technical mistakes (other than the operational changes listed in the appendix to this rule), such as errors in calculation or mistaken interpretations of law made in determining permit conditions.

(7) When the owner or operator is required by the director to incorporate an applicable toxic effluent standard or prohibition pursuant to section 307(a) of the act.

(8) When the owner or operator is required by the director to reopen conditions in a permit which are established in the permits for toxic effluent limitations and standards.

(9) Upon request of the owner or operator who qualifies for effluent limitations on a net basis under 40 C.F.R. section 122.45(g) , or when a discharger is no longer eligible for net limitations, as provided in 40 C.F.R. 122.45(g)(1)(ii) .

(10) Upon failure of the director to notify as required by paragraph (C) of rule 901:10-6-03 of the Administrative Code, another state whose waters may be affected by a discharge from the facility.

(11) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the facility under 40 C.F.R. section 125.3(c).

(12) To establish a notification level for toxic pollutants as provided in 40 C.F.R. section 122.44(f) .

(F) The owner or operator may submit a written application for modification to the director for approval by the director if the following apply:

(1) The owner or operator is requesting material or substantial alterations or expansions or additions to facility or other changes defined as a modification; or

(2) New information or data obtained by the owner or operator justify permit conditions in addition to or different from those in the existing permit.

(G) An application for permit modification shall contain the following information:

- (1) The name of the owner or operator and the name and address and telephone number of the facility or operation;
- (2) A description of the exact nature of the changes to be made;
- (3) An explanation of why the modification is needed or requested; and
- (4) Applicable technical information in support of the request for modification including but not limited to, data, records, reports, trend analysis, site plans and engineering plans that show the location and extent of work to be performed or the plan to be modified.
- (5) If the director decides that the request for modification is not justified, the requestor and the owner or operator shall be notified in writing and provided the reasons for the director's determination.

(H) If the owner or operator plans a type of change that is not listed in the appendix to this rule, the owner or operator shall submit the information listed in paragraph (J) of this rule to the director. The director shall:

- (1) Exercise discretion to determine if the type of change proposed by the owner or operator is a modification, an operational change, a major operational change, or, for NPDES permit holders, a change to the NPDES permit manure management plan;
- (2) Notify the owner or operator in writing of the director's determination that the submitted change is a modification, an operational change, a major operational change, or a change to the NPDES permit manure management plan; the approval or denial of the submitted change and the reasons for such determination to approve or deny.
- (3) The owner or operator shall not commence any change until the director has acted in accordance with the requirements in paragraph (H)(2) of this rule.

(I) Major operational changes. The owner or operator shall submit to the director's authorized representative any planned major operational change listed in the appendix to this rule in accordance with paragraph (J) of this rule.

The owner or operator shall not commence with any changes proposed in the planned major operational change submitted to the department until:

- (1) The department has approved the planned major operational change and has notified the owner or operator in writing of such approval.
- (2) If the department determines the planned major operational change submitted by the owner or operator is not approved, the owner or operator shall be notified in writing and provided the reasons for the department's determination.

(J) An owner or operator's application for a major operational change shall contain the following information:

- (1) The name of the owner or operator and the name, address and telephone number of the facility or operation;
- (2) A description of the exact nature of the changes requested;



(3) An explanation of why the major operational change is requested; and

(4) Applicable technical information in support of the request for the change, including but not limited to: date, records, reports, trend analysis, site plans and engineering plans that show the location and extent work to be performed or the plan to be modified.

(K) Operational changes. The owner or operator shall record operational changes in the operating record to be maintained at the facility.

(1) The director's authorized representative may review any operational change and any applicable information with the operational change; and

(2) The director's authorized representative may approve the operational change in writing. The director's authorized representative may signify approval of an operational change by the representative's signature and date in the operating record.

(L) Operational changes and/or major operational changes made by the owner or operator and approved by the director in accordance with the requirements of this rule shall be recorded in the operating record as required in rule 901:10-2-16 of the Administrative Code and in the permit to install or permit to operate as applicable.

(M) Changes to NPDES permit manure management plans. For NPDES permits, where a permittee makes changes to the concentrated animal feeding operation's manure management plan previously approved by the director, other than as a result of calculations made in accordance with the requirements of paragraph (D)(1)(g)(ix) of rule 901:10-3-01 of the Administrative Code, the permittee must provide the director with the most current version of the manure management plan and identify changes from the previous version.

The director must review the revised manure management plan to ensure it meets the requirements of rules 901:10-2-08 to 901:10-2-11 , 901:10-2-13 to 901:10-2-16 and rule 901:10-2-18 , and any applicable provisions in rules 901:10-3-02 to 901:10-3-11 of the Administrative Code, and must determine whether the changes to the manure management plan necessitate revision to the terms of the manure management plan incorporated into the permit issued to the concentrated animal feeding operation pursuant to paragraph (D)(1)(g) of rule 901:10-3-01 of the Administrative Code. If revision to the terms of the manure management plan is not necessary, the director shall notify the permittee and upon notification the permittee may implement the revised manure management plan. If revision to the terms of the manure management plan is necessary the director shall determine whether the changes are substantial changes under this provision.

(1) Substantial changes to the terms of a manure management plan incorporated as terms and conditions of an NPDES permit include, but are not limited to:

(a) Addition of new land application areas not previously included in the permittee's manure management plan, unless the land application area is covered by the terms of a manure management plan incorporated into an existing NPDES permit and the permittee complies with the terms applicable to the land application area under the existing NPDES permit.

(b) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop established pursuant to paragraph (D)(1)(g)(ix) of rule 901:10-3-01 of the Administrative Code.

(c) Addition of any crop or other uses not included in the terms of the permittee's manure management plan and corresponding field-specific rates of application expressed in accordance with paragraph (D)(1)(g)(ix) of rule 901:10-3-01 of the Administrative Code.

(d) Changes to site-specific components of the nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to surface waters of the state.

(2) If the director determines that the changes to the terms of the manure management plan are not substantial, the director must make the revised manure management plan publicly available, revise the terms of the manure management plan incorporated into the permit, and notify the owner or operator and inform the public through the Ohio department of agriculture livestock environmental permitting program web site of any changes to the terms of the manure management plan that are incorporated into the permit.

(3) If the director determines that the changes to the terms of the manure management plan are substantial, the director shall notify the public and make the proposed changes and the information submitted by the permittee available for public review and comment. A comment period of thirty days shall be provided for public review and comment, with notice of the comment period being provided to the permittee and published on the Ohio department of agriculture livestock environmental permitting program web site. During the comment period any interested person may submit written comments on the notice and may request a public meeting. The grounds for a public meeting shall be the same as those provided in paragraph (D) of rules 901:10-6-01 and 901:10-6-04 of the Administrative Code. Any public meeting shall be conducted as described in rule 901:10-6-04 of the Administrative Code, except that notice regarding the scheduling of the public meeting shall be provided on the Ohio department of agriculture livestock environmental permitting program web site, rather than through publication in the legal notice section of a newspaper. The provisions of paragraph (J) of rule 901:10-6-04 of the Administrative Code shall also apply to the public comment period. The director shall, if necessary, require the applicant to further revise the manure management plan in order to approve the revision to the terms of the manure management plan incorporated into the concentrated animal feeding operation's permit. Once the director incorporates the revised terms of the manure management plan into the permit, the director must notify the permittee and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

(N) The incorporation of the terms of a concentrated animal feeding operation's manure management plan into the terms and conditions of a general NPDES permit issued under Chapter 901:10-4 of the Administrative Code is not a cause for modification pursuant to this rule.

[Click to view Appendix](#)

Effective: 06/08/2014

R.C. 119.032 review dates: 03/21/2014 and 06/08/2019

Promulgated Under: 119.03

Statutory Authority: 903.08 , 903.10

Rule Amplifies: 903.01 , 903.02 , 903.03 , 903.04 , 903.05 , 903.07 , 903.08 , 903.081 , 903.082 , 903.09 , 903.10

Prior Effective Dates: 9/1/2011, 1/23/2009, 9/15/2005, 7/2/2002

## **901:10-1-10 Prohibitions.**

(A) No person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under section 903.02 of the Revised Code.

(B) Except for a concentrated animal feeding facility that is operating under an installation permit issued by the director of environmental protection or a review compliance certificate issued by the director, on and after the date on which the program has been finalized under section 903.01 of the Revised Code, no person shall operate a concentrated animal feeding facility without a permit issued by the director under section 903.03 of the Revised Code.

(C) No person to whom a NPDES permit has been issued shall discharge or cause to be discharged, in any waters of the state any manure, pollutants, or stormwater resulting from an animal feeding facility in excess of the permissive discharges specified under an existing permit.

(D) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, no person shall discharge pollutants from a concentrated animal feeding operation into waters of the state unless authorized by a valid and unexpired NPDES permit issued by the director or unless an application for renewal of such NPDES permit has been submitted by the person and is pending.

(E) Any person who discharges or proposes to discharge pollutants shall apply for a NPDES permit. A concentrated animal feeding operation proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

(F) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director, no person shall discharge stormwater resulting from an animal feeding facility unless authorized by a NPDES permit when such a permit is required by the act and subsequently issued by the director of agriculture pursuant to section 903.08 of the Revised Code.

(G) No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.

(H) No person shall violate any effluent limits established by rule.

(I) No person shall violate any other provision of a NPDES permit issued by the director.

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## 901:10-1-11 Exclusions.

The following discharges do not require NPDES permits:

(A) Discharges of dredged or fill material into waters of the state which are regulated under section 404 of the Act and by the director of environmental protection in accordance with Chapter 6111 of the Revised Code.

(B) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with NPDES permits until all discharges of pollutants to waters of the state are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

(C) Any discharge in compliance with the instruction of a federal on-scene coordinator, as that term is defined in section 2305.39 of the Revised Code, who is the federal official designated in the national contingency plan pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(D) Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures range lands and forest lands, but not discharges from concentrated animal feeding operations, discharges to aquaculture projects, and discharges from silvicultural point sources.

(E) Return flows from irrigated agriculture.

(F) Discharges into a privately owned treatment works, except as the director of environmental protection may otherwise require.

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